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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,372	11/25/2003	Eric Gregori	5569/79410	4620
22242 7590 02/01/2008 FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER PAUL, ANTONY M	
			ART UNIT 2837	PAPER NUMBER
			MAIL DATE 02/01/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/722,372	Applicant(s) GREGORI, ERIC	
	Examiner ANTONY M. PAUL	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2007.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **NON-FINAL REJECTION (RCE)**

### **Claim Objections**

1. Claims 1, 8, 23, 25, 31 and 41 are objected to because of the following informalities: In regard to claims 1, 8, 23, 31 and 41, the phrase, "the pass point event being a fixed reference and not being a count of the counter" (claims 1, 8, 31 and 41), the phrases, "the first subsequent pass point event being a second fixed reference and not being the count", "the last pass point event being a third fixed reference and not being the count", (see claim 23) are not explicitly stated in the specification disclosure. In regard to claims 25 and 30, the claims include a positive and negative limitation. The phrase, "subsequently calibrating a determined position (positive limitation), "not calibrating a determined position" (negative limitation). Appropriate corrections are required.

### **Claim Rejections – 35 USC § 112**

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 8, 23, 31 and 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase, "the pass point event

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being a fixed reference and not being a count of the counter" not explicitly taught by the specification.

### **Claim Rejections – 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1- 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Richmond et al. (5,729,101) (For claims 1-22, 24, 28, 29 and 41-44 please refer to the final office action dated 8/16/2007 for details).

In regard to claims 1, 8, 23, 31 and 41 the limitation, pass point being a fixed reference (fixed position, column 10, lines 58-63) and not being a count of the counter (pass point events such as movement of the gate to a fixed position such as in figs. 6-9 is set by a control unit, see column 12, lines 41-46).

In regard to claim 23, the newly added limitations are taught in claims 8, 17 and 20 (please refer to the office action dated 8/16/2007 for details).

In regard to claims 25 and 30, Richmond et al. teach a method, wherein subsequently calibrating a determined position (column 5, lines 35-39, column 6, lines 10-12)) further comprises not calibrating a determined position for the object with respect to a pass point event does not occur during the first count zone (It is reasonable that a pass point event that does not occur during a count zone requires no calibration).

In regard to claim 26, Richmond et al. teach a method, wherein taking a first predetermined action (such as automatically compensating, column 6, lines 10-13. column 12, lines 39-46) when a pass point event does not occur (such as a gate stops short, column 6, line 11) during a first count zone (such as shown in fig.8).

In regard to claim 27, Richmond et al. teach a method, wherein taking a first predetermined action includes automatically initiating (column 14, lines 4-15) a learning mode of operation (such as the operation of gate operator, see flow chart of figs. 13-15, column 14, lines 45-56, column 13, lines 45-60).

In regard to claim 31, Richmond et al. teach a method for use with a movable barrier operator such as a gate operator (column 9, line 52) comprising:

During a learning mode operation such as the gate operation (see flowchart in figs. 13-15, column 14, lines 45-56 & column 13, lines 45-60):

- initiating movement of a movable barrier such as a gate [G] (column 10, lines 60-63, column 12, lines 1-8 and column 14, lines 12-15),

- Maintaining a count (500 counts, fig.6) that corresponds to the movable barrier such as the gate [G] movement to a predetermined position such as an opened or closed position (column 11, lines 63-65, column 12, lines 41-43),

- Detecting a first pass point event (see claim 8 in the final office action dated 8/16/07) that is a fixed reference and not the count (see explanation in claim 1 above),

During a first mode of operation (see column 11, lines 58-67):

- Maintain a current count (see explanation above),

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-Detecting (hall sensors, column 14, lines 16-45) the first count zone (such as a count between 0 and 500 as in fig.7),

-Using a pass point event (such as gate [G] moving to a coasting position, fig.7) as occurs during the first count zone (see above) to facilitate calibration of position determination (column 11, lines 30-42, column 12, lines 41-46) of movable barrier [G],  
The other limitations for the base claim are explained in claim 8 (see final office action dated 8/16/07 for details).

In regard to claim 32, Richmond et al. teach a method, wherein maintaining a count comprises initializing the count (initiate, column 14, lines 4-15),

In regard to claim 33, see claim 15 in the final office action dated 8/16/07.

In regard to claim 34, Richmond et al. teaches a normal mode of operation (column 14, lines 54-56, column 17, and lines 31-34).

In regard to claims 35, 36 and 37, Richmond et al. teaches modifying a current count (see fig.8, subtract, increment, decrement, see column 12, lines 9-46).

In regard to claim 38, the limitations for the base claim are explained in claim 17 in the final office action dated 8/16/07 and for learning mode (see claim 31 above).

In regard to claim 39, Richmond et al. teaches defining another count zone (such as a count between 0 and 485 as in fig.7). The other limitations are explained in claim 15 of the final office action dated 8/16/07.

In regard to claim 40, the limitations are explained in claims 31 & 39.

### **Respond to Arguments**

6. Applicant's arguments filed see Remarks filed on 11/15/2007 have been fully considered but they are not persuasive. To further clarify the discrepancy involved an explanation to the argument is described below:

A signal generator [84] is responsive (such as generate counts, see column 10, lines 54-55) to movement of the moveable barrier such as a gate [G] and that generates a pass point event (such as the gate [G] movements shown in figs 6 thru 9). Signals are generated by a microprocessor [64] to a motor controller [80] to control a motor [38] and thereby controlling a gate [G]. The gate moving to a particular position as shown in figs. 6-9 relates to a count (see column 11, lines 63-66 & column 12, lines 41-43). According to the applicant, the phrase "a pass point signal generator that is responsive to movement of the movable barrier and that generates a pass point event" is clearly interpreted or read as a signal generator that generates a pass point event (see abstract of applicant's specification, lines 2-3).

Applicant has stated that pass point event of Richmond cannot provide a fixed reference. Richmond clearly teaches pass point events that provide a fixed reference as explained in the rejection of claim 1.

### **Conclusion**

7. The indicated allowability of claims 31-40 are withdrawn due to the amendment made by applicant and a thorough examination of the reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTONY M. PAUL whose telephone number is

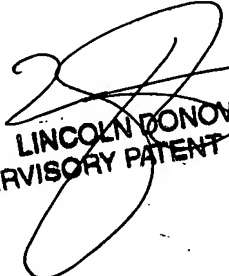
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(571)270-1608. The examiner can normally be reached on Mon - Fri, 7:30 to 5, Alt. Fri, East. Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AP *AP* 1/28/2008

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER